
(1959) 11 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No"s. 498 and 795 of 1958 and W.A. No"s. 97 of 1958 and 46 of 1959

T.A. Mahomed Usman

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 17-11-1959

Acts Referred:

Citizenship Act, 1955 — Section 10, 18, 9, 9(1), 9(2)
Constitution of India, 1950 — Article 11, 14, 19(1), 19(5), 226
Foreigners Act, 1946 — Section 2, 3

Citation : AIR 1961 Mad 129 : (1960) ILR (Mad) 697 : (1960) 2 MLJ 290

Hon'ble Judges : Rajagopalan, J;Rajagopala Ayyangar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Iyer and P. Sharfuddin, for Inamdar Abdus Salam, M.K. Nambiar, M.M. Nair and K.K. Venugopal, for the Appellant; A.G. and Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala Ayyangar, J.—These petitions and the writ appeals have been heard together since they involved the decision of a common

question of law as to the validity of certain rules framed under the Indian Citizenship Act, 1955 (Central Act 57 of 1955) and in particular of para

3 of schedule III thereof. The orders whose validity and legality are challenged in these four proceedings are in common form and have been

passed on the directions of the Central Government either by the Collector of the District (W. P. Nos. 498 of 1958 and 795 of 1958) or by the

Commissioner of Police, Madras (W. A. No. 97 of 1958 and 48 of 1959), requiring the petitioner or the appellant as the case may be, described

as the holder of a Pakistan passport, who was unauthorisedly overstaying in India, to leave India within a month of the receipt of the notice, with a

warning that on failure to comply, he would be prosecuted and deported under the provisions of the Foreigners Act of 1948.

2. It is common ground that the basis upon which the orders have been passed, was that these individuals were not citizens of India and even if

they were at one time citizens of India they had ceased to be citizens, of India by virtue of their having voluntarily ""acquired the citizenship of

another country"" -- Pakistan, that their stay in India was on foot of their passports and that since the period specified in these documents had long

ago expired, the Central Government were entitled to direct them to remove themselves from this country.

On the other hand the claim of the petitioners and appellants was that they were citizens of India at the commencement of the Constitution by virtue

of Article 5, and that they continued to retain their Indian Citizenship till this date, that they had not acquired Pakistan Citizenship and could

consequently not be treated as "foreigners" and directed to leave India. In view of the nature of the matters thus raised for decision, it is necessary

to narrate the facts of each of the cases before us in order to appreciate the position of each individual involved in each of them and we shall,

therefore, deal with each case separately.

3. W. P. No. 498 of 1958: The petitioner is said to have been born in Tituvannamali, North Arcot District, in or about 1910. It is admitted that he

went to Pakistan in or about July 1951, though how he managed to enter Pakistan and in what capacity is not in evidence. Desiring to come back

to India he applied to the authorities in Pakistan and obtained a passport in December 1952 and came to India and to the Madras State. In

January 1953 a visa was granted to him by the Indian authorities, and having obtained extensions of the currency of the visa he stayed on in India

till March 1954.

During his stay in India he applied on 7-12-1953 to the Government to permit him to stay permanently in India but this was refused. He left for

Pakistan on 22-3-1954 and came back to India and to Tiruvannamalai for a second time on 28-10-1955 on the strength of the passport issued in

December 1952, and a visa granted by the Indian High Commissioner in Karachi. The passport had a currency of five years and was, therefore,

valid until the end of 1957. When the term of the visa expired he applied for its

extension by four months for his stay in India, and this extension expired on 23-7-1956.

Thereafter he applied on 14-5-1957 u/s 5(1) of the Citizenship Act, 1955 for his registration as a citizen of India, and this was rejected by the

Collector on 5-7-1957, who thereafter, passed an order u/s 3 of the Foreigners Act on 16-7-1957 directing the petitioner to leave India within a

month from its receipt. Meanwhile, against the orders of the Collector refusing registration, the petitioner petitioned to the State Government, and

the petition was referred to the Government of India.

The Government of India rejected the petitioner's application and the Collector of North Arcot was directed to take necessary action against the

petitioner for his deportation out of the country. A prosecution has been launched against the petitioner for violation of the Foreigners" Act (C. C.

No. 148 of 1958), and this proceeding is now pending. In these circumstances the prayer in the petition is for the issue of a writ of mandamus

directing the State of Madras to forbear from enforcing the provisions of the Foreigners Act against him.

4. The principal contention urged in the affidavit filed in support of the petition, and which was pressed before us by Mr. Venkatasubramania Iyer,

learned counsel for the petitioner, was that the petitioner was by birth and domicile a citizen of India at the date of the Constitution and had

retained that character up to date, notwithstanding the recitals in the Passport which he admittedly applied for and obtained from the authorities of

Pakistan, and notwithstanding the fact that he entered India only on the strength of that document, and stayed in this country since 28-10-1955

only under a visa granted by the Indian authorities based on the Pakistan passport.

5. It is not in dispute that even assuming that the petitioner was a citizen of India on the date of the commencement of the Constitution, he would

cease to be such by becoming a citizen of Pakistan by virtue of Section 9 of the Citizenship Act, 1955, and since this statutory provision is the

basis of the impugned order, it is necessary to examine it in detail. This Section is in the following terms:

Section 9(1): Any citizen of India who by naturalisations, registration or otherwise voluntarily acquires, or has at any time between the 26th

January, 1950 and the commencement of this Act voluntarily acquired, the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this Sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such

authority, in such manner, and having regard to such rules of evidence as maybe prescribed in this behalf.

If the petitioner ceased to be a citizen of India, it is not contested that the order requiring him to leave India was legal and could validly be

enforced. In the case of this petitioner it is not seriously contested that he was a citizen of India at the commencement of the Constitution (26-1-

1950); the question for consideration is whether the petitioner had or had not ceased to be a citizen of India by virtue of Section 9(1).

6. In furtherance of the provisions contained in Section 9(2) Section 18 of the Act enacted (to refer only to the provisions having immediate relevance):

Section 18(1): The Central Government may by notification in the Official Gazette make rules to carry out the purposes of this Act.

Section 18(2): In particular and without pre judice to the generality of the foregoing power, such rules may provide for -- (h) the authority to deter

mine the question of acquisition of citizenship of another country, the procedure to be followed by Such authority and rules of evidence relating to

such cases:

By virtue of this rule making power, the Indian Citizenship Rules of 1956 have been promulgated, and Rule 30 of the Rules reads :

(1) If any question arises as to whether, when or how any person has acquired the citizenship of another country, the authority to determine such

question shall, for the purposes of Section 9(2) be the Central Government (2) The Central Government shall in determining any such question

have due regard to the rules of evidence specified in Schedule III.

7. We would have to refer in more detail to the rules in Schedule III, but at this stage it is sufficient to refer to Para 3 of this Schedule which runs:

The fact that a citizen of India has obtained on any date a passport from the Government of any other country shall be conclusive proof of his

having voluntarily acquired the citizenship of that country before that date".

If this rule of evidence were in terms applied to the case of the petitioner, there could be little doubt that the petitioner should be treated as having

"voluntarily acquired" Pakistani Citizenship, and the acquisition of Pakistani Citizenship would ipso facto terminate the Indian citizenship of the

petitioner by virtue of the provision contained in Section 9(1) of the Citizenship Act.

In these circumstances the principal contention raised in the affidavit in support of the petition and the core of the arguments of Mr.

Venkatasubramania Iyer, learned counsel for the petitioner, were that para 8 was invalid and ultra vires, and that if the evidence afforded by the

Pakistan passport obtained and held by the petitioner did not conclude the matter, the decision of the Central Government would be invalid, and

the petitioner should have to be treated as retaining his Indian citizenship, with the result that the order of deportation would be illegal

8. Before proceeding to discuss the various arguments put forward by the learned counsel in support of the contention, that the petitioner still

retained his Indian citizenship, it is necessary to mention that the validity of para 3, and in particular the question, whether the rule was beyond the

rule making power of the Central Government conferred by Section 9(2) and Section 18 of the Citizenship Act, came up for consideration before

this Bench in Dilawar Khan v. State of Madras, W. P. No. 260, of 1956; and by a judgment which we rendered on 29-4-1957 we upheld the

validity of the rules.

9. When subsequently the same point of the validity of this paragraph was raised before Bala-krishna Ayyar, J. in W. P. No. 462/58, the learned

Judge followed the decision of the Bench and dismissed the petition. Writ Appeal 46/1959 which is now being heard by us is an appeal from the

decision of the learned Judge following the view taken by us as regards the validity of Rule 3 in W. P. No. 260 of 1956. The other Writ Appeal

97/1958 is against a decision of Ramaswami, J. raising a similar point.

10. W. P. No. 498 of 1958 originally came on for disposal before Ramachandra Iyer, J. and as it was urged before him that our decision in W. P.

260 of 1956 required reconsideration because of the decision of the Supreme Court in Ebrahim Vazir Mavat Vs. The State of Bombay and

Others, which was stated to have relevance to the present point and which had not been brought to our notice and was, therefore, not considered

by us, Ramachandra Iyer, J. thereupon directed W. P. 498 of 1958, to be posted before a Bench, and that is how this petition comes up before

us.

Mr. Venkatasubramania Iyer learned counsel for the petitioner referred us to the decision of the Supreme Court to which he had invited the

attention of Ramachandra Iyer, J. but it is now admitted that this decision which related to the state of affairs before the enactment of the

Citizenship Act does not in any way bear upon any of the points raised by him in his arguments in this petition.

11. Mr. Venkatasubramania Iyer when he opened the case stated that he was challenging the constitutional validity of both Section 9(1) and (2) of

the Citizenship Act, 1955, and also the validity of para 3 of Schedule III of the Rules which we have set out earlier, but ultimately confined his

attack to the validity of para 3 and of Sub-section (2) of Section 9, giving up his case as regards Section 9(1) of the Act. We shall set out the

grounds upon which the validity of Section 9(2) was attacked in its proper place, but it would be convenient at this stage to set out the grounds

upon which the validity of para 3 was challenged, because ultimately that would be the main point for consideration in the disposal of the writ

petitions and the writ appeals.

12. It was contended that the rule contained in para 3 was invalid as being beyond the rule making power of the Central Government u/s 9(2) read

with Section 18 of the Act principally for four reasons: (1) Whereas Section 9(2) contemplated a quasi judicial enquiry into question whether the

Indian Citizenship had been terminated, the rule shut out any enquiry and stifled the determination of that question. (2) Para 3 was not a rule of

evidence, which alone was within the power of the Central Government to prescribe u/s 18, but was a rule of substantive law and was, therefore,

beyond the rule making powers. (3) The rule was unreasonable, applying the tests laid down by Lord Russell, C. J. in *Kruse v. Johnson*, 1898 QB

91. (4) Even if para 3 was within the rule making power u/s 9(2) and had even

been included as part of the statute itself, it was constitutionally invalid as violating Article 14 of the Constitution, because it operated to deny equal protection of the laws which was guaranteed by the Article.

13. To these grounds Mr. M. K. Nambiar, who appeared for the appellant in W. A. 48 of 1959, added two more: (1) Section 9 provided for the

termination of Indian citizenship, only when the citizenship of a foreign state was acquired. That had to be determined by the Foreign law--in this

case the law in Pakistan. According to the Pakistan Citizenship Act of 1951, which was the statute which governed the mode in which the

Citizenship of Pakistan could be acquired by foreign nationals, the obtaining of a Pakistan passport was not a mode by which a person could

acquire Pakistani citizenship.

The rule providing for the termination of the Indian citizenship on the obtaining of the Pakistani passport was outside the scope of Section 9(2)

because, it was only the acquisition of a foreign nationality that could terminate Indian Citizenship u/s 9(1). (2) Even if the taking of a Pakistani

passport rendered a person a Pakistani citizen on the terms of section 9(1), there would still have to be an enquiry, with an opportunity to the party

to make representations and to adduce evidence to show that the acquisition of Pakistani citizenship was not "voluntary", because u/s 9(1) it was

only the "voluntary acquisition" of Foreign Citizenship that operated to terminate Indian citizenship. This last submission was with reference to the

special facts in W. A. 46 of 1959, to which we shall advert in due course.

14. In view of these submissions and in order to appreciate the arguments of the learned counsel in support, it is necessary to set out the other

statutory provisions bearing upon the topic. Part II of the Constitution, Articles 5 to 11 relate to Citizenship. Article 5 defines the persons who

constitute citizens of India at the commencement of the Constitution.

Article 5: "At the commencement of this Constitution every person who has his domicile in the territory of India and (a) who was born in the

territory of India; or (b) either of whose parents was born in the territory of India; or (c) who has been ordinarily resident in the territory of India

for not less than five years immediately preceding such commencement, shall be a citizen of India.

Article 7 is in the nature of a proviso to Article 5, and it runs:

Notwithstanding anything in Articles 5 and 6, a person who has after the first day of March, 1947, migrated from the territory of India to the

territory now included in Pakistan shall not be deemed to be a citizen of India:

Provided that nothing in this article, shall apply to a person who, after having so migrated to the territory now included in Pakistan, has returned to

the territory of India under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for

the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the nineteenth day of July, 1948.

The other articles which are of immediate relevance to the cases before us are Articles 9, 10 and 11.

Article 9: No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he

has voluntarily acquired the citizenship of any foreign State.

Article 10: Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, subject to the

provisions of any law that may be made by Parliament, continue to be such citizen.

Article 11: Nothing in the foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the

acquisition and termination of citizenship and all other matters relating to citizenship".

The content of Entry 17 of the Union Legislative list reading "Citizenship, Naturalisation and aliens" would have to be understood in the light of

Article 11.

15. Before proceeding further we might point out that by reason of his domicile and birth within the territory of India the petitioner in W. P. 498 of

1958 could claim Indian citizenship, subject to the operation of Art.7, and if his proceeding to Pakistan did not amount to a "migration" he

would under Art.10 continue to be a citizen of India, subject to the provisions of any law made by Parliament. A law which Parliament might make

in relation to him included one providing for the termination of his citizenship and of other matters relating to citizenship:

By virtue of Article 9 a person would not be deemed to be citizen of India by birth or by reason of relationship, if he had voluntarily acquired the

citizenship of any foreign state. But obviously Article 9 has application to the acquisition of citizenship of a foreign State before the commencement

of the Constitution, and is in the nature of a proviso or rider to the other articles, under which a person is treated as a citizen of India. The

expression ""foreign State"" is defined in Article 367 as meaning any State other than India. This is however subject to the proviso "provided that

subject to the provisions of any law made by Parliament, the President may by order declare any State not to be a foreign state for such purposes

as may be specified in the order".

By a declaration made under this proviso (Constitutional Declaration as to Foreign States Order 1950 by the Governor General) it was enacted:

Subject to the provisions of any law made by Parliament every country within the Commonwealth is hereby declared not to be a foreign state for

the purpose of the Constitution"".

So that until there was legislation by Parliament the acquisition of the citizenship of any Commonwealth country including Pakistan would not have

the effect of terminating Indian citizenship under Article 9 of the Constitution.

16. Parliament undertook legislation on the subject of citizenship in 1955 when it enacted the Citizenship Act, Act 57 of 1955. Sections 3 to 7 of

this Act made provisions for the acquisition of Citizenship which were by birth, descent, registration, naturalisation and by incorporation of

territory. Of these it is only necessary to refer to Section 5 because the petitioner made an application for registration under this provision. Section

5 is in these terms:

(1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on

application made in this behalf, register as a citizen of India any person who is not already such citizen by virtue of the Constitution or by virtue of

any of the other provisions of this Act and belongs to any of the following categories :

(a) persons of Indian origin who are ordinarily resident in India and have been so resident for six months immediately before making an application

for registration;

(b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;

- (c) women who are, or have been, married to citizens of India;
- (d) minor children of persons who are citizens of India and
- (e) persons of full age and capacity who are citizens of a country specified in the first Schedule:

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India

under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation-- (1) For the purposes of this Sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, or any of his grandparents, was born in undivided India.

(2) No person being of full age shall be registered as a citizen of India under Sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship, or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under Sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause (b)(ii) of Article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later." It would be noticed that Section

5(1)(e) refers to persons, who are citizens of a country specified in the first schedule. This has to be read in conjunction with Section 11, under, which "every person who is a citizen of a Commonwealth country specified in the First Schedule shall by virtue of that citizenship have, the status of a Commonwealth citizen of India", and the terms of Section 12 which enables the Central Government to "make provision on the basis of

reciprocity for the conferment of all or any of the rights of a citizen of India on the citizens of any country specified in the First Schedule". The first

schedule sets out, inter alia, the Commonwealth countries and includes in that list Pakistan.

17. What is of immediate relevance to the matters before us is the fasciculus of sections comprising Sections 8 to 10 headed, ""Termination of

Citizenship"". Section 8 enables Indian citizens who were at the same time citizens or nationals of another country to renounce Indian citizenship, this

to be registered by the prescribed authority. This was in pursuance of the intention of the Parliament to discourage as far as possible dual

nationality or double allegiance in the case of those who were citizens of India, an intention which had been manifested by the Constitution itself by

the inclusion of Article 9 whose terms we have already set out. Section 9 has already been set out and hence the only other provision which

remains to be mentioned is section 10 under which Indian citizenship was deprived as a penalty or as a punitive measure or misconduct on the part

of naturalised citizens. Section 10 enacts:

(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than

under clause (b)(ii) of article 6 of the Constitution or clause (a) of Sub-section (i) of Section 5 of this Act shall cease to be a citizen of India, if he is

deprived of that citizenship by an order of the Central Government under this section.

2. Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied

that:

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged, unlawfully traded or communicated with an enemy or been engaged in, or

associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been

sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time

a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of

which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public

good that that person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made,

notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds

specified in Sub-section (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case

referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in Sub-section (2) other than clause (e) thereof and that

person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a committee of Inquiry

consisting of a Chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central

Government in this behalf.

(6) The Committee of Inquiry shall, on such reference hold the inquiry in such manner as may be prescribed and submit its report to the Central

Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

We need only add that Section 13 enables the Central Government to certify that a person with respect to whose citizenship of India a doubt

exists, is a citizen of India. We have already referred to the terms of the relevant provision in Section 18 in respect of the power to make rules,

particularly in regard to the evidence regarding question of the acquisition of the Citizenship of another country and the terms of Rule 30 of the

Citizenship Rules of 1956. The second para of this rules refers to Schedule III as containing the rules of evidence on this matter. Of these we have

set out para 3, because it was the validity of that rule which was the main subject of argument. Schedule III has five paragraphs of which we may now refer to the others.

18. Paragraph 1 reads :

Where it appears to the Central Government that a citizen of India has voluntarily acquired the citizenship of any other country, it may require him to prove within such period as may be fixed by it in this behalf, that he has not voluntarily acquired the citizenship of that country; and the burden of proving that he has not so acquired such citizenship shall be on him.

Paragraph 2 enables the Central Government to make reference to its Embassy in a foreign country for information relating to the acquisition of the

Indian citizenship of a citizen of that country, and for acting on the report of information received in pursuance of such reference. We have already

set out the terms of Rule 3 and it is, therefore, unnecessary to restate the same. Paragraph 4 permits the Central Government to take into account

certain circumstances in determining whether a citizen has or has not voluntarily acquired citizenship of any other country, and these are (a) whether

the person has migrated to that country with the intention of making it his permanent home, (b) whether he has in fact taken up permanent

residence in that country; and (c) any other circumstances relevant to the purpose.

Paragraph 5 reads:

Notwithstanding anything contained in para graph 4, a citizen of India shall be deemed to have voluntarily acquired the citizenship of Pakistan: (a)

if he has migrated to Pakistan with the intention of making it his permanent home; or (b) if he has obtained any certificate of domicile in Pakistan or

declared himself to be a citizen of Pakistan or of Pakistan domicile; or (c) if he has applied for and obtained, a right, title or interest in evacuee pro

perty in Pakistan; or (d) if he has obtained a tem porary permit for entry into India from Pakistan.

19. It would thus be seen that though Pakistan might not have been a foreign country within the meaning of Article 9 of the Constitution because of

the Governor-General's order promulgated under Article 367(3), the acquisition

of Pakistani citizenship would terminate the Indian citizenship of a person under the Citizenship Act, 1955, and this position was not contested.

20. The arguments of learned counsel ranged over a very wide field, but before entering into a discussion on the points urged, it might be

convenient to set out two matters--merely to put them aside. The first relates to a contention, that the rules contained in Schedule III of the

Citizenship Rules, 1956 infringed "the freedom to reside and settle in any part of the territory of India" and "to move freely throughout the territory

of India" guaranteed by Articles 19(1)(d) and 19(1)(e) of the Constitution.

We must, however, point out that though Mr. Venkatasubramania Iyer referred to Article 19 and to the violation of the rights guaranteed under it

when he opened his case, he did not press the contention when it was realised that the rights or freedom guaranteed by Article 19 were those

which inhered in citizens of India and that unless a person were "a citizen of India" he could not claim those freedoms. The question whether a

person was or was not a citizen of India is obviously outside the scope of Article 19, but is dependent upon the relevant law which Parliament is

enabled to make under Article 11 of the Constitution and entry 17 of the Union List.

If by reason of the provisions contained in the law enacted by Parliament or rules validly framed thereunder, a person was not a citizen of India or

had ceased to be a citizen of India, there could be no question of such a person claiming the protection of the rights guaranteed by Article 19. In

saying this we are not oblivious to the fact that the status of a person as a citizen of the country is a most valued right, both for its own sake and as

the basis of other rights and privileges, and that unless a law validly enacted terminates such a status, the individual has a right to approach the

Courts for vindication and protection. But that however is no warrant for invoking the provisions of Article 19(5) as limiting the scope of the laws

that Parliament might in its wisdom enact.

21. The second matter relates to the assistance derived from the decisions, one way or the other, relating to the validity of paragraph 3 of Schedule

III of the Citizenship Rules. A division-Bench of the High Court of Andhra Pradesh in *Mahommed Khan v. Govt. of Andhra Pradesh*, AIR 1957

AP 1047, held that the rule contained in paragraph 3 was ultra vires sections 9

and 18 of the Citizenship Act. This decision however has been dissented from in *Ghaurul Hasan and Others Vs. The State of Rajasthan and Another*, ; by a Division Bench of the Rajasthan High Court, and by the Bombay High Court in *State Vs. Sharifbhai Jamalbhai*, .

Mr. Venkatasubramama Iyer, learned counsel for the petitioner, did not however seek to derive any assistance from the reasoning contained in the decision of the Andhra Pradesh High Court, and similarly the learned Advocate General from the decisions of the Rajasthan or the Bombay High Court which upheld the validity of this, rule. In these circumstances we have not considered it necessary to discuss the reasoning upon which these decisions have reached their respective conclusions.

22. We consider it convenient to premise the discussion of the main points urged by Mr. Ven-katasubramania Iyer, by referring to one of his

submissions, that Section 9 of the Citizenship Act was unusually and unreasonably harsh in that it did not provide for the several safeguards

substantial and procedural, which were provided even for naturalised citizens or those who were citizens of India only by reason of Article 5(c) of

the Constitution in the case of those who were citizens of India by birth or descent under Article 5(a) or 5(b) of the Constitution.

Learned counsel urged that u/s 10 of the Act before a citizen of India who was such by reason of naturalisation or by virtue of Article 5(c) of the

Constitution could be deprived of citizenship by the order of the Central Government, the specific grounds on which the same was effected had to

be clearly set out and the person affected afforded an opportunity of making representations and to have his case referred to a Committee of

inquiry, which would function in a judicial manner, and that even after the receipt of the report of such a Committee of Inquiry the Central

Government was not to make an order adverse to such citizen unless satisfied that it was not conducive to the public good that that person should

continue to be a citizen of India. (Section 10(3)). It was pointed out that no such enquiry was statutorily required in the case of the termination of

citizenship u/s 9(1) of the Act.

23. If by this line of reasoning, learned counsel desired us to draw the inference that there would be a full-fledged judicial enquiry u/s 9 before the

Government could hold that an Indian citizen had voluntarily acquired the

citizenship of a foreign country, we must express our disagreement with the entire approach to this question. Section 10 is punitive in its nature (except as to section 10(2)(e)) and that is the ratio of the safeguards provided by it. Besides, section 10 is practically a reproduction of section 7 of the British Nationality and Status of Aliens Act, 1914, while section 9 has come down from the U. K. Naturalisation Act, 1870, where it was section 6. Its immediate predecessor was section 13 of the British Nationality and Status of Aliens Act, 1914 where it ran:

A British subject who, when in any foreign state and not under disability, by obtaining a certificate of naturalisation or by any other voluntary and formal act, becomes naturalised therein, shall thenceforth be deemed to have ceased to be a British subject.

24. It might be of some interest to note the history of the provision which is now found in section 9 of the Indian Citizenship Act. Under the British common law, nationality or citizenship acquired by birth was held incapable of being lost or renounced (Calvin's case, 7 C. O. Ref. 25(a) and 27 (b)). This did not give rise to any complications until there was a large scale migration from Britain to America, when difficulties were experienced when these immigrants became naturalised American subjects.

They had then a plural nationality owing to the continued retention of British citizenship, not by any means a desirable state of affairs. Though the United States to start with also adopted the same principle of permanent allegiance flowing from birth within territory, by the middle of the 19th century this doctrine was abandoned. As early as 1859 Attorney General Black upheld the existence of the fundamental right of an individual to expatriation. This principle was embodied in the U.S.A. Statute book in most solemn form by the Act of July 27, 1868, which declared :

Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the Rights of life, liberty and the pursuit of happiness.

though the overt acts which would affect voluntary expatriation were left without specification.

25. Meanwhile in England a Royal Commission was appointed in 1869 for enquiring into the laws of Naturalisation and allegiance and as a result of the recommendation of this Commission, the Naturalisation Act of 1870, which

contained section 6 was passed by the British Parliament, a rule of law which, re-enacted in successive enactments, obtained till 1948. So far as the U.S.A. was concerned by the Act of Congress of 2nd March 1907 section 2 provided that a national of the United States "shall be deemed to have expatriated himself when he has been naturalised in any foreign state, in conformity with its laws or when he has taken an oath of allegiance to any foreign state".

This has continued to be the law of the United States by virtue of Section 401 of the U.S. Nationality Act, 1940 when they were further enlarged by the addition of several other overt acts which were treated as proof of expatriation provisions which were enacted in the Immigration and Nationality Act of 1952 (section 349). Great Britain no, doubt has departed from this principle in the British Nationality Act of 1948 the prevention of dual nationality ceasing to be the principle of legislature policy, but the reasons for the change in the law were political, and their discussion, would take us far afield.

We have made this, what might be considered a digression, just to point out that section 9(1), by which the acquisition of the citizenship of the nationality of a foreign state operates to terminate the citizenship of the de cujus, is nothing out of the ordinary, and a provision on the same lines as in section 9 is found in the laws of several other countries in which provision on exactly the same lines as in Section 10 of the Act is made, where punitive action is taken by the State against a citizen for deprivation of citizenship. (Compare Sections 15 and 19 of the Canadian Citizenship Act 1946 and Sections 17 and 21 of the Australian Nationality Act 1920 and 1948 to refer to some only by way of example). Statutory expatriation was seized upon as the answer to problems of international relations and for the avoidance of friction arising out of the conflicting claims to allegiance. The underlying principle was that no man shall be permitted deliberately to place himself in a position where his services may be claimed by more than one Government and his allegiance may be due to more than one State.

26. Before proceeding to examine the details of the arguments addressed to us, we would refer to a general submission of Mr. Venkatasubramania Iyer regarding the manner in which we should approach this question, as to

whether or not an Indian citizen had by his act rendered himself an alien. In regard to this matter he drew our attention to and laid considerable stress on a few decisions of the Supreme Court of the United States, the reluctance they exhibited in holding that a citizen of that country had renounced his status as a citizen, the strict proof they insisted on before they would so hold and generally their interpretation of the relevant law enacted by Congress.

But we consider that the American decisions are no guide because of the vital differences between the Constitutional powers of Congress and of the Indian Parliament. The status of citizenship acquired by birth was protected from congressional control by the XIVth Amendment:

All persons born or naturalised in the United States and subject to the jurisdiction thereof are citizens of the United States and of the States wherein they reside.

Expatriation is not so much as mentioned in the Constitution and legislation on the subject had to Test on the congressional power over foreign affairs. But on the other hand Article 11 of the Indian Constitution specifically confers on Parliament the power to make laws relating inter alia to the "termination" of citizenship.

27. To come back to the argument addressed to us we consider that it would be convenient to analyse first the provisions contained in section 9(1) of the Citizenship Act, and then the law relating to citizenship generally, and in particular that relating to the obtaining of passports under the law of Pakistan, as a preliminary to the consideration of the points raised as regards the validity of paragraph 3 of schedule III of the Citizenship Rules, 1956.

We need hardly mention that the case of the respondent that the petitioner had ceased to be a citizen of India is wholly rested on the terms of

Section 9. The critical words of the section are: (1) that a citizen of India should by naturalisation, registration or otherwise, acquire the citizenship of another country; (2) such acquisition should be voluntary. Article 9 of the Constitution itself had made provision for the cessation of Indian citizenship by voluntary acquisition of the citizenship of a foreign State.

This would have certainly covered the period upto 26-1-1950. Section 9(1) makes provision for the effect of an acquisition of foreign citizenship

principally in two periods: (1) between 28-1-1950 and the commencement of the Citizenship Act (30-12-1955) and (2) the period after the

commencement of the Act. In the first mentioned case the termination of Indian citizenship is to be at the commencement of the Citizenship Act; in

the other it would be at the moment of such acquisition.

In the case of the petitioner in W. P. 498 of 1958 and also of the individuals involved in the other proceedings, the passport was applied for and

obtained from the Government of Pakistan, after the enactment of the Pakistan Citizenship Act 1951, that is during the period from 26-1-1950 to

30-12-1955, so that if their contentions regarding the validity of the orders passed against them are rejected their status as citizens of India would

have been terminated on 30-12-1955.

28. A point was also urged as to the meaning of the expression "voluntary" in section 9(1). It was submitted that the use of this expression implied

that besides the factum of the individual acquiring "by naturalisation, registration or otherwise", the citizenship of another country, there should be

proof or opportunity for disproof, of an intention to renounce Indian citizenship leading to that act. It was urged that on that ground there should

have been an enquiry in which the parties should have been given an opportunity to prove that they did not either fully comprehend the legal effect

of their action, or that they had taken out the passports without their having any intention to relinquish their Indian citizenship.

The same contention was presented in a slightly different form by invoking the concept of private law rules regarding mistake which invalidate a

contract or disposition. As to the first we need only say that on the Statute the act which constitutes the expatriation is stated objectively; and the

intention with which these acts are done are not the conditions which impart validity to or import effectiveness to them. They operate in law,

regardless of the intentions of the actor.

As regards the second, the learned Advocate General submitted that the expression "voluntary" was used in section 9(1) in contradistinction to an

acquisition of citizenship by the operation of law. We consider that this submission is well founded, and that the expression "voluntary" is used in

this section to mean "naturalisation" in the narrow sense of that term, and as excluding compulsory, involuntary or collective naturalisation which

some States have adopted at different times.

29. We shall next take up for consideration the relevant provisions of the Law of Pakistan in relation to the grant of passports, because it is by

virtue of the contents of the Pakistan Passport, which the petitioner applied for and obtained that he has been held to have acquired Pakistan

Citizenship and to have therefore ceased to be a citizen of India.

30. No doubt a passport is an identity" and a travel document, but it might also evidence the nationality of the person to whom it is issued. That is

entirely a matter which is regulated by the municipal law of the State which grants the passport. It is not in controversy that the passport which has

been granted to the petitioner and (similarly to the other individuals concerned in the other proceedings) is a "national passport"; that is a passport

which is obtainable by or granted to only a citizen of Pakistan.

The Pakistan Citizenship Act was passed in 1951, (Pakistan Act II of 1951), and the passport system was introduced by a law promulgated on

23-9-1952, which was brought into force on and from 15-10-1952 when the previous permit system was abrogated. Under the Pakistan passport

rules, passports are issued in Pakistan for visiting India only to Pakistani nationals. Paragraph 3 of the Passport Regulations reads : "Passports are

granted to the citizens of Pakistan as defined in the Pakistan Citizenship Act, 1951 who are ordinarily residing in Pakistan.

Paragraph 4 of this Regulation requires that the applicant for a passport should file a declaration in the prescribed form verified by a further

declaration made by a Magistrate, Justice of the Peace, any Police officer not below the rank of Superintendent, Class I Civilian Gazetted Officer

or Notary Public. In the declaration the applicant has to state his exact national status as a citizen of Pakistan that is whether he is a Pakistani by

birth, naturalisation or descent, by migration or by marriage. He is further required to state that he has not lost the status of a citizen of Pakistan

thus acquired.

The officer verifying the declaration has himself to declare that to the best of his personal knowledge and belief the declaration of the applicant is

true, and that he had personally satisfied himself that the applicant was a fit and proper person to receive the passport. It is only when the assertion

of Pakistan nationality by the applicant, verified and supported by the Official

declarant, is accepted by the Passport Official that a Passport issues.

Accordingly in the passport itself there is a statement by the Pakistan official granting it that the holder of the passport is a Pakistani national.

31. It is by virtue and under the authority of such a document that the petitioner entered into India, and he was therefore entitled to diplomatic

protection at the hands of the Indian authorities, who recognised the validity of the passport by granting a visa.

32. Alverton, C. J. defined a passport in *R. v. Brailsford*, (1905) 2 K.B. 730, as a document "issued in the name of the sovereign on the

responsibility of the Crown to a named individual intended to be presented to the Governments of foreign nations and to be used for individual

protection as British, subject in foreign countries."

The "national" passport issued to the petitioner in the present case entitled the holder to receive diplomatic protection. One question of general

importance which would be raised by this state of affairs would be whether the petitioner could invoke the passport and claim diplomatic

protection of the Pakistan Government while in Indian territory, and at the same time also claim to be an Indian citizen and insist upon his rights as

such.

By reason of the obtaining of passports from Pakistan authorities it is clear that he owed allegiance to that Government, and the law on this point

has been authoritatively laid down by the decision of the House of Lords in *Joyce v. Public Prosecutions Director*, 1946 A.C. 347. In that case a

British passport had been issued in error to an American citizen, but this was not held to impair the allegiance which the passport-holder owed to

the British Crown by reason of his acceptance of the diplomatic protection afforded by the passport.

The underlying intention of Article 9 of the Constitution and similarly of Section 9 of the Citizenship Act undoubtedly was (that except in the case of

dual nationality arising by reason of differences in the laws of various countries and not due to the voluntary acts of the individual) to ensure that

there shall be no divided loyalties, and that no person shall play fast and loose with the allegiance he owed to this country, and by his voluntary act

obtain at one and the same time the protection of two Governments. That object would completely be defeated if we were to hold that the

obtaining of a national passport of another country did not terminate Indian citizenship.

33. It has further to be mentioned that the question whether a person has or has not acquired the citizenship of another country is a matter

dependent upon the municipal law of that other country. If the authorities of that country, who are vested in that behalf with the power to decide

whether a person has or has not acquired the country's citizenship, have held that he has so acquired it under the relevant law and have so

declared in a formal document and clothed him with the diplomatic protection which that Government offers to its nationals, we consider that it

would be contrary to international propriety for the authorities of this state to embark upon an enquiry as to whether the procedural or other

requirements of the Pakistani law have or have not been satisfied.

34. It is common ground that the orders u/s 3 of the Foreigners Act directing the petitioner (and similarly the individuals involved in the other

proceedings before us) to leave India are based on three grounds: (1) His (or their) stay in India was by virtue of the Passport held by him (Or

them) under which he was declared a citizen of Pakistan by the Pakistan Government authorities issuing the passport and granted diplomatic

protection at the hands of this country, during his stay here : (2) The declaration of the Pakistan authorities regarding his (or their) citizenship of

Pakistan bound him (or them) and he (or they) could not be heard to put forward any plea dial it was a mistake or could not have the legal effect

which on its face it bore: (3) That if the above two points were made out, the petitioner (and similarly each of the others) had ceased to be a citizen

of India and the order to leave the country could and was. properly and legally issued.

It would, therefore, be seen that since the fact of the obtaining of the Passport is not in controversy it is really the second of the above points that is

in debate. If Para 3 of Schedule III of the Citizenship rules were valid, the declaration in the Passport regarding the nationality of the petitioner

would be conclusive evidence of bis being a Pakistani citizen, and therefore one who had ceased to be an Indian national by force of Section 9(1)

of the Citizenship Act 1955. That is how the validity of Para 3 of Schedule III assumes crucial importance.

35. We shall now take up for consideration the several points urged by Mr. Venkatasubra-maniam Iyer and Mr. M. K. Nambiar in support of their

contention, that this para of the rules was invalid. The first ground urged was that para graph 3 was in fiat contradiction of sections 9(2) and 18(2)

(h) of the Citizenship Act in that while the latter contemplated an enquiry for determining whether there had been a termination of the citizenship of

India by the acquisition of citizenship of another country, the rule in question, barred or foreclosed the enquiry.

In our opinion, this argument is unsound and proceeds upon an incorrect appreciation of the evidentiary value of the national passport obtained

under the law governing grant of passports in Pakistan. Our meaning would be made clear if we refer to an illustration. For instance, if the rule had

provided for the production of an authenticated copy of the naturalisation certificate issued by a foreign state, say Pakistan, could it be said that the

rule which made provision that the production of such a certificate shall be conclusive evidence of the person having acquired foreign nationality

and citizenship would be invalid as precluding further enquiry as to whether the person registering himself as a foreign national did or did not intend

to give up his Indian citizenship or nationality.

We do not consider that it would be possible to answer this question in any other way, than to say that such a rule would be valid. No doubt

section 9(2) contemplates an enquiry, but the enquiry is to find out and arrive at a conclusion as to whether an Indian citizen had or had not

acquired foreign nationality. If the document which is the subject-matter of the rule of evidence is one which indisputably shows on its face that the

de cujus had acquired foreign nationality no further enquiry would be necessary, because the object to be attained by the enquiry is established by

that document. We have endeavoured to explain the nature of the enquiry, which according to the law of Pakistan precedes the grant of passport.

If according to the law of Pakistan a passport cannot and will not be issued by the authorities of that State except to a citizen of Pakistan, and the

persons involved in these proceedings have satisfied the Pakistan authorities by declaration signed by them supported by the further declarations by

the officials of Pakistan regarding the truth of the statements that they were citizens of Pakistan, and the passports were obtained on the faith of

those declarations, we do not see how the rule which invests a national passport obtained in this manner as a document from which the Indian

Government could draw an inference, that the holders of the passports are Pakistani citizens or nationals is invalid as a rule of evidence.

36. In this connection some little point was made of the fact that though the Pakistani passport might indicate that its holder was a citizen of

Pakistan, there was nothing in it to indicate the date on which he became or from which he should be treated as being a citizen of Pakistan. Since

u/s 9(1) of the Citizenship Act the acquisition of foreign nationality would entail the loss of Indian Citizenship only if the foreign Citizenship was

acquired after 26-1-1950, it was suggested that the obtaining of a passport would afford no indubitable evidence as to whether the foreign

citizenship had been acquired after 26-1-1950, and that for this purpose at least there should be an enquiry which was precluded by the provisions

of paragraph 3.

This argument, however, proceeds on an error and does not take into account the fact that Pakistani Citizenship came into existence only under the

Pakistan Citizenship Act of 1951 (Act II of 1951), which came into force on 13-4-1951, and therefore the citizenship of this foreign country,

which was asserted in the Passport, could not possibly relate to any date earlier than 13-4-1951, which would be well within the period specified

in section 9(1) of the Citizenship Act.

37. The learned Advocate General pointed out that the contention urged on behalf of the petitioner that paragraph 3 of Schedule III of the

Citizenship rules foreclosed an enquiry which was contemplated by section 9(2) of the Act was incorrect, because of the very words in Rule 30(2)

of the Citizenship rules which read, ""The Central Government shall in determining any such question have due regard to the rules of evidence

specified in Schedule III."" The phrase "shall have due regard to" he submitted indicated that the rules of evidence had not a compulsive force, and

that the authority though it normally would take it into account was not strictly bound to do so, and relied for support on the observations of AIR

1943 164 (Privy Council) .

We see force in this argument, though we must point out that if a citizen of India voluntarily accepted a national passport from a foreign country on

the basis of his being a national of that State it would be unthinkable for the Central Government in the face of this rule to disregard the contents of the Passport and treat the individual as a citizen of India in spite of the declaration by the foreign State in that document. Of course, if no document were available, the matter would be at large, and there would have to be evidence of the acquisition of foreign nationality before a citizen of this country could be held to have expatriated himself.

38. The second point urged was that the rule making power u/s 9(2) of the Citizenship Act enabled only a rule of evidence to be prescribed, but

what paragraph 3 of Schedule III had promulgated was not a rule of evidence but a rule of substantive law and was consequently beyond the rule

making power. In support of this position Mr. Venkatasubramania Iyer referred us to certain decisions of the Supreme Court of America. In

particular our attention was invited to the observations in the dissenting judgment of Holmes J. in *Bailey v. Alabama*, (1910) 55 Law Ed 191 ,

where the learned Judge speaking of conclusive presumptions enacted in statutes said:

I agree that if the statute created a conclusive presumption, it might be held to make a disguised change in the substantive law"".

and to the decision in *Tot v. United States*, (1942) 87 Law Ed 1519. Taking the second case first the point which arose in it was whether the

presumption created by the statute had any rational connection between the fact proved and the fact directed by the Statute to be presumed, and

on a finding, that it had not, the Court held that it offended the requirement of due process. The law in question related to the imposition of a

penalty on the unauthorised transport of firearms in inter-state or foreign commerce, and the enactment raised a statutory presumption of the

commission of such offence, from the use of a firearm in the commission of a crime of violence.

The learned Judges held that since the firearms used for the perpetration of the crime could obviously have been obtained by the criminal, without

transgressing the law relating to interstate or foreign commerce, there was no rational connection between the offence namely the violation of inter-

state or foreign commerce and the use of the firearms in the commission of a crime of violence. We are unable to see how this decision helps

learned counsel for the petitioner.

Certainly there is a rational connection on the one hand between the declaration by the petitioner to the Pakistan authorities that he was a citizen of

that country, the acceptance of that declaration or assertion of his by the Pakistan authorities, the endorsement of their decision in the passport

which that person obtains and holds and the requirements of section 9(1) of the Citizenship Act on the other; and the decision cited can therefore

have no application.

39. Next as regards the observations of Holmes J. in (1910) 55 Law Ed. 191 that dictum has to be understood in the light of the content of the

expression "the rule of evidence" in the particular system of law. The Indian Evidence Act includes among its provisions some conclusive

presumptions. In Indian legal phraseology these sections are undoubtedly rules of evidence, and their enactment would be comprehended within

the legislative entry relating to "evidence". Apart however from this narrow and purely semantic approach, the matter may be viewed from a

broader angle.

The validity of the rule prescribing or making the contents of a passport presumptive or conclusive evidence of a foreign citizenship or nationality

would be dependent upon the matter which has to be established before or found by, the authorities deciding the question, as to whether or not

there has been a termination of Indian citizenship. What is necessary to be proved before the Indian citizenship could be terminated is the

acquisition of the citizenship of a foreign country.

A formal and solemn declaration by the constituted authorities of that country claiming the individual as their national and extending to him their

diplomatic protection would certainly go very near establishing the fact to be proved, and consequently we do not see any impropriety or invalidity

in the terms of the rule now in question. Beside, without reserving or positing a power in the Central Government to sit in judgment over the action

of the Pakistan authorities and to come to a conclusion that those authorities committed an error in the interpretation of administration of their law it

cannot be held that the rule is beyond the rule making powers.

40. Without going so far as to say that the Central Government is precluded from claiming an individual who has obtained a passport as a citizen of

India, we are clearly of the opinion that the Government is not bound to do so. It is a commonplace to say that citizenship involves not merely lights

but also obligations, and it is possible that when the Government was satisfied that a citizen of India was trying to evade his obligations as such by

recourse to a passport obtained by fraudulent means or by false declaration from a foreign Government, it might well be that the Government will

be entitled to investigate the circumstances in which the passport was obtained and not attribute to it the effect which it normally carries.

But an individual who claims that he uttered a falsehood and made misrepresentation to the Pakistan authorities about his being a citizen of Pakistan

and produced declarations to support the assertion, which he now says is false, is certainly not entitled as of right to put forward his misconduct for

disclaiming the Pakistan citizenship which he asserted and claim that he continues to be a citizen of India, especially when under the Pakistan

passport Rules as under our own the making of a false declaration, is a crime entailing penalties including imprisonment. A rule of evidence, which

in effect, denies him such an opportunity cannot be challenged as unreasonable in its operation.

41. Next it was said that the rule of conclusive presumption exacted in para 3 was "unreasonable" -- in the sense spoken of by Lord Russell C. J.

in 1898 QB 91 and was therefore invalid. The learned Chief Justice was considering the bye-laws of a local authority and after stating that such

bye-laws would be invalid if they were "unreasonable" --amplified this expression by saying :

If for instance they were found to be partial and unequal in their operation between different classes; if they were manifestly unjust; if they

disclosed bad faith; if they involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification

in the minds of reasonable men, the Court might well say "'Parliament never intended to give authority to make such rules; they are unreasonable

and ultra vires.

There is more than one answer to this argument. In the first place it is open to the gravest doubt whether the test of reasonableness by which Lord

Russel judged the validity of bye-laws can be applied to rules framed under express statutory power. There is at least one reported decision of the

Court of Appeal in England, *Sparks v. Ash Ltd.*, 1943 K.B. 223 where Scott LJ specifically ruled that the 1898 QB 91 test of reasonableness

could not be applied to determine the validity of regulations framed under statutes (See also *Taylor v. Brighton Corporation*, 1947 KB 736, per

Lord Greene M. R. at page 748 9).

It might be of further interest to note that Scott L. J. relied on the regulations then impugned having been placed on, the table of both Houses

before they became law as an argument against the applicability of the test of unreasonableness. u/s 18(4) of the Citizenship Act, the rules have as

soon as they are made to be laid on the table of the Houses of Parliament for not less than fourteen days, and are to be subject to such

modification as the Parliament may make when so laid. Again, even if the test applied, we do not see any Unreasonableness or injustice in it, which

would make us say ""Parliament never intended to give authority to make such a rule"".

The criterion would then be, is there a rational connection between the fact to be proved and the fact laid down in the rule from which the

presumption as to the existence of that fact is to be drawn. It would be seen that it is this which appears, it might be in different aspects, in several

of the arguments on which the validity of the rule is challenged. What we have stated earlier ought to suffice to answer this point against the

petitioner. In fact Mr. Venkatasubramania Iyer himself at one stage realised that he could not successfully contend that there was no rational

connection between the fact to be proved and the impugned rule, and it was because of this that he refrained from relying on the decision of the

Bench of the Andhra Pradesh High Court in AIR 1957 Andh Pra 1047.

42. The last of the points urged by Mr. Ven-katasubramania Iyer was that the rule was unconstitutional as being obnoxious to Article 14, so that

even if it was within the rule-making power or had even formed a part of Section 9 of the Citizenship Act, it would still be invalid. The "equal

protection of the law" was stated to be violated in that holders of Pakistani passports were said to be discriminated against and their Indian

citizenship taken away from them, whereas others were not similarly treated. It was on the basis of the same argument that the constitutional

validity of Section 9(2) was impugned.

This was presented in the form of a dilemma -- of Section 9(2) did not authorise the Rule, Section 9(2) was good, but the rule was bad; if however

Section 9(2) did authorise the rule, the section itself was unconstitutional. To examine this argument it is necessary to state and in part re-state the

basic principles underlying Part II of the Constitution, the relevant sections of the Citizenship Act and the rules. Article 5 of the Constitution treats

every person born in India, or the issue of parents born in India and domiciled in the country at the commencement of the Constitution as a citizen

of India.

At the same time, recognising that several persons who would be Indian citizens under Article 5 had migrated to Pakistan, at the time of the

Partition, it makes provision in Article 7 for such persons not being Indian citizens, and finally Article 9 recognises the right of Indian citizens to

voluntarily ex-patriate themselves. It is clear that the principle of jus soli and jus sanguinis enunciated by Article 5, must give rise to the problem of

dual nationality, and by Article 11 Parliament is expressly vested with power to make laws providing inter alia for terminat-ing Indian Citizenship.

Next we have the Citizenship Act, which enacts the rules of law relating to Indian Citizenship from and after the commencement of the

Constitution. Sections 3 to 7 of the Act deal with the five modes by which Indian citizenship could be obtained -- birth, descent, registration,

naturalisation and incorporation of territory -- but what is of immediate relevance are the provisions which follow which deal with the termination of

citizenship. We have already pointed out that if jus soli or jus sanguinis determined citizenship, there was bound to be the problem of dual

nationality, by reason of the operation of the laws of other countries, without any act of the individual, himself.

Section 8 enables a person with dual nationality to renounce Indian citizenship. The mode of doing so is by a declaration which is registered by the

prescribed authority. Section 9 deals with another situation in which there is a renunciation of Indian citizenship. The case contemplated is that of

an. Indian citizen voluntarily acquiring a"" foreign citizenship after 26-1-1950. The principle underlying the Section is that whatever be the case with

dual nationality which a person might have owing to the operation of law, every citizen of India shall elect either to retain that citizenship or to

expatriate himself, and that once he so elects, he cannot claim to retain Indian citizenship and profess a dual allegiance.

The Constitutional validity of Section 9(2) and that of the rule of evidence contained in paragraph 3 have to be tested with reference to this basic

fact. We fail to see any foundation for the contention that holders of passports are irrationally discriminated against by the rules. An examination of

the rule formulated in Sch. III show they are consistent with the basic principle underlying Section 9(1) and they cover the several modes in which

or the overt acts by which an individual could signify his election to become a citizen of another country.

Several overt acts are listed with reference to the election in favour of citizenship of Pakistan in particular in para 5 of Sch. III which we have

already extracted. Of these it is sufficient to recall sub-paras (b), (c) and (d) which runs: "'A citizen of India shall be deemed to have voluntarily

acquired the citizenship of Pakistan, (b) if he has declared himself to be a citizen of Pakistan or of Pakistan domicile; (c) if he has applied for

and obtained a right title or interest in evacuee property in Pakistan and (d) if he has obtained a temporary permit for entry into India from

Pakistan.

43. Thus every citizen of India who either declares himself a citizen of Pakistan, or obtains rights or privileges which are open only to citizens of

Pakistan who have migrated from India is treated as having acquired Pakistani citizenship. Undoubtedly these acts or pieces of conduct are

voluntary -- even in the narrow sense. Paragraph 3 is just in line with this, and there is, therefore, no question of Pakistan passport-holders being

discriminated -against. The overt acts set out in those paragraphs have been framed keeping in view the law in Pakistan, and since these acts are

possible of accomplishment only on the footing of the individual being treated by Pakistani authorities as their national -- we do not see any basis

for invoking Article 14 to invalidate the provision in para 3 or Section 9(2).

44. These four exhaust what we consider are the major points urged by Mr. Venkatasubramania Iyer. In addition he made an alternative

submission on the footing that the rule was constitutional and intra vires of the rule making power and was addressed to the interpretation of this

Rule. The argument was that paragraph 3 of Sch. III should be construed as

operating only prospectively and as applying only to cases where the passport was obtained after 7-7-1956, when the Citizenship Rules were promulgated or at least after Citizenship Act, 1955 came into force, that is from and after December, 1955.

It would be noticed that the Petitioner obtained his passport in December 1952 and it was therefore urged that if this construction were adopted

the petitioner would retain his Indian Citizenship which he had on 26-1-1950 and which he continued to possess under Article 10 of the

Constitution. We are unable to uphold this contention of the learned Counsel. The question, whether the provision is prospective or retrospective

must depend upon the language used by the enactment. Obviously Section 9(1) covers the period between 26-1-1950 the date of the Constitution

and 30-12-1955 when the Citizen-ship Act came into force.

To uphold the construction urged by learned Counsel would be to ignore the specific terms of Section 9(1) and to create a gap between 26-1-

1950 and 30-12-1955 when as a fact, the terms of Section 9(1) were designed to avoid any such. If Section 9(1) were in terms retrospective

from 26-1-1950 it follows that unless the rules contained any specific provision they would operate in so far as they related to the termination of

citizenship during the same period, that is retrospectively. Learned counsel did not go so far as to say that if in the period between 26-1- 1950 and

30-12-1955 a citizen of India applied for and obtained a formal naturalisation certificate of a foreign country, it would not have the effect of

terminating the Indian citizenship as and from 30-12- 1955.

If so, there cannot be any distinction arising out of the mode in which the acquisition of foreign citizenship is to be proved. We have, therefore; no

hesitation in saying that paragraph 3 of Schedule III cannot be read as confined to cases where the passport was obtained from 30-12-1955. We

need only add that the presumption raised by para 3 is that the passport holders acquired the citizenship of the foreign country before the date of

issue because it is the affirmation of an earlier state of affairs that is rendered crucial.

45. There was one further point urged by Mr. Nambiar, who appeared for the appellant in W. A. No. 46 of 1959, which could be conveniently

dealt with here. The argument ran thus: u/s 9(1) the Indian Citizenship of an

individual could be lost Only when he acquired the citizenship of a foreign country by "naturalisation, registration or otherwise", and that for the purpose of ascertaining when such foreign citizenship had been acquired, recourse must necessarily be had to the law of the relevant foreign country. In the case on hand the relevant law would be the Pakistan Citizenship Act of 1951. An examination of its provisions discloses that the grant of a passport is not a mode by which such citizenship is acquired.

Hence the provision in Para III of Schedule III which imports a presumption regarding an acquisition of foreign nationality by the obtaining of a passport of a foreign country is beyond the rule making power.

46. We consider that this argument is not sound and proceeds on fallacious reasoning. It is no doubt necessary that an individual should acquire a foreign, citizenship or nationality before his citizenship could be terminated u/s 9. This could be by ""naturalisation, registration or otherwise"". But the point still for consideration is whether or not the foreign country regards him as its citizen or national.

47. The fallacy in the argument of the learned Counsel consists in thinking that the rule has regard only to the obtaining of the passport, whereas what is crucial is the contents of the document and in particular the declaration by the Pakistani official that the holder of the passport has been recognised by him as a Pakistan citizen. If according to the law of Pakistan a person is not entitled to apply for or obtain a passport unless he is a citizen of Pakistan under its Citizenship Act, and a declaration made to that effect by the individual has been accepted by the Pakistan authorities, we do not see any impropriety in the Government of India proceeding on the basis that the Pakistan authorities acted properly in accordance with the requirements of their law.

There certainly cannot be an enquiry contemplated in this country, after notice to the Pakistan authorities, for determining whether their decision to accept an individual as a citizen of Pakistan was or was not correct. In addition the normal presumption in favour of the regularity of official acts would appear to support the view that this Government could properly act on the basis that the authorities in the foreign State have correctly understood and applied their law to the facts and circumstances of the case.

48. Besides this, the facts in Writ Appeal No. 46 of 1959 in which Mr. Nambiar

appeared were as follows : The appellant was born in Quetta Sn

1913. It was stated that he had come to Madras in 1932 and had stayed here since then. On 1-4-1953 he applied to the Pakistan High

Commissioner at New Delhi and obtained a passport from that authority. Section 3 of Pakistan Citizenship Act, 1951 enacts:

At the commencement of this Act (13-4-1951) every person shall be deemed to be a citizen of Pakistan -

(a) Who or any of whose parents or grand-parents was born in the territory now included in Pakistan and who after the fourteenth day of August,

1947, has not been permanently resident in any country outside Pakistan.....

Having been born in Pakistan territory--Quetta--the only question was whether his residence at Madras from 14-8-1947 was permanent or not.

That obviously was dependent upon his intention and if he declared to the Pakistan authorities that his residence in Madras was temporary, there

was nothing to prevent his having been a citizen of Pakistan from 13-4-1951. It was entirely for him to make a declaration on the topic and if the

Pakistan au-thorities accepted that declaration and acted upon that basis we do not see how it could be contended that he was not a citizen of

Pakistan or had not acquired Pakistani Citizenship. It is, therefore, an additional reason why the contention raised by Mr. Nambiar is further

untenable in the case of the appellant in W. A. No. 46 of 1959.

49. We shall now take up for consideration the point raised by Mr. Venkatasubramania Iyer based, on the provisions of the Foreigners Act, under

which the direction to the Petitioner to remove him-self from India has been passed. Learned counsel submitted that assuming that Section 9 of the

Citi-zenship Act as well as the rules including paragraph 3 of Schedule III were intra vires and valid, still the Petitioner cannot be directed to

remove himself from India under the Foreigners Act and prosecuted for non-compliance with that direction, because the Petitioner was not a

"foreigner" within the meaning of the Foreigners Act 1946. The steps in the reasoning on which the contention was urged were briefly these: The

Petitioner entered India with a Pakistan Passport on 28-10-1955. On that date the Petitioner was not a foreigner because Section 2(a) of the

Foreigners Act, 1946 as it then stood defined a "Foreigner" as "'a person who,

(i) is not a natural born British subject as defined in Sub-sections (1) and (2) of

Section 1 of the British Nationality and Status of Aliens Act, 1914,

or (ii) has not been granted a certificate of naturalisation as a British subject under any law for the time being in force in India; or (iii) is not a citizen of India".

No doubt this definition was amended by Act II of 1957 which came into force on 19-1-1957 by which the expression "Foreigner" was defined

to mean, "A person who was not a citizen of India" omitting categories (i) and (ii) but this amendment effected in 1957 was not retrospective in its

operation. Sub-section (1) of Section 1 of the British Nationality and Status of Aliens Act 1914 enacted that the following persons shall be deemed

natural born British subjects, namely, (a) any person born within His Majesty's dominions; and owing allegiance. The Petitioner having been born

in India fell within this definition of natural born British subject and was therefore, not "a foreigner" when he entered India.

50. The next step in his argument was based upon the decision of a division Bench of the Bombay High Court in *The State Vs. Mahmudkhan*

Navrangkhan, . In that case a person who was a natural born British subject entered India on a Pakistan passport and visa valid for three months

on 12-7-1956. When he failed to leave India after the expiry of three months, he was prosecuted for contravention of Rule 7 of the Foreigners'

Order 1948 which enacts :

Every foreigner who enters India on the authority of a Visa issued in pursuance of the Indian Passport Act, 1920 (XXXIV of 1920) shall obtain

from the Registration Officer having jurisdiction, "either at the place at which the said foreigner enters India or if he has entered India otherwise than

on the authority of a transit visa or as a tourist as defined in the Registration of Foreigners Rule, 1939, at the place at which he resides in India" a

permit indicating the period during which "he is authorised to remain in India and shall, unless, the period indicated in the permit is extended by the

Central Government, depart from India before the expiry of the said period and at the time of foreigners' departure from India the permit shall be

surrendered by him to the Registration Officer having jurisdiction at the place from which he departs".

Section 13 of the Foreigners Act made "contravention of the provisions of the Act or any order made thereunder" an offence. The period for

which the permit enabled him to stay in India expired, and thereafter the District Superintendent of Police issued a notice to him requiring that he

should quit India within a month from the date of the receipt of the notice. As the individual did not leave India in spite of the notice, he was

prosecuted for a breach of Rule 7 of the Foreigners' Order, 1948 read with Section 13 of the Foreigners Act which was made punishable u/s 14.

The Magistrate acquitted him, and thereafter the State filed an appeal against the order of acquittal. The teamed Judges held that, as the

respondent was not a "foreigner" on the date when he entered India, he was not obliged to comply with the provisions of paragraph 7 of the

Foreigners' Order 1948, and that not being "a foreigner" he had not committed any offence u/s 13. Mr. Venkatasubramania Iyer relied on this

decision and urged that the Petitioner was not "a foreigner" when he entered India, and therefore he could not be dealt with under the Foreigners

Act. The learned Advocate General submitted two answers to this contention.

The first was that the direction to the Petitioner to leave India was one which was made u/s 3 of the Foreigners Act under which the Central

Government might give directions generally with respect to all foreigners or with respect to a particular foreigner, and in this case there were

individual orders passed against persons involved in the several proceedings before us with respect to their presence or continued presence in

India. For the purpose of enabling the Government to pass an order u/s 3 the only question was not the status of the individual when he entered

India, but whether, he was or was not a foreigner within Section 2(a) on the date when the order was passed or the direction issued.

The decision before the learned Judges of the Bombay High Court was concerned with the interpretation of paragraph 7 of the Foreigners Order,

which does not really bear upon the construction of Section 3 of the Foreigners Act. Even if the decision of the Bombay High Court were correct,

which he disputed, the Petitioners cannot derive any advantage, unless they were citizens of India on the date of the order, since Section 2(a) had

been amended to remove from the category of non-foreigners, British subjects within the British Nationality and Status of Aliens Act, 1914. This

argument of the learned Advocate-General appears to be sound and we accept it.

If the Petitioner was not a citizen of India by reason of his acquisition of Pakistan

Nationality he was "a foreigner" within Section 2(a) of the Foreigners Act, 1946, on the date when the impugned orders were served on him, and consequently the direction issued to him u/s 3 of the Act would therefore be valid. The second submission of the learned Advocate General was that the correctness of the decision of the Bombay High Court might be open to consideration, because of the fact that the respondent in that case entered India not in his character as a citizen of India but by virtue of his status as a citizen of Pakistan. In view, however, of the conclusion we have reached that the validity of the direction to the Petitioner u/s 3 of the Foreigners" Act cannot be successfully challenged, it is unnecessary for us to embark upon any enquiry to deal with this second submission.

51. To appreciate the last of the points urged by Mr. Nambiar, it is necessary to set out certain matters which have been put forward by his client.

As they are indeed common to W. P. No. 795 of 1958 and W. A. No. 97 of 1958, we might as well narrate the facts of each before entering on this discussion.

Writ Appeal No. 46 of 1959.

52. This is an appeal from the judgment of Balakrishna Ayyar, J. in Writ Petition No. 462 of 1958. We have referred to the fact that the ap-pellant

having been born in Quetta came over to Madras in 1932, and while remaining in India made an application to the High Commissioner for Pakistan

in New Delhi and obtained a passport from that authority on 1-4-1953. By an order dated 17-7-1957 of the Commissioner of Police Madras

passed on instructions from the Government of India he was directed to leave India within a month from the date of its receipt.

Thereafter he applied on 19-8-1957 to the Collector for registration as an Indian Citizen u/s 5(1) of the Citizenship Act and made an application to

the Central Government invoking its jurisdiction u/s 9(2) of the Act and Rule 30 of the Citizenship Rules. His application was rejected by the

Central Government on 28-5-1958. He thereupon filed W. P. No. 462 of 1958 for setting aside the order directing him to leave India, An

allegation was made, that, the application for passport made by him in the beginning of 1953, was really not voluntary, but because of the pressure

of the local Police authorities, who threatened him with action, unless he

obtained such a passport.

This allegation has been denied, and the main complaint voiced in the Writ Petition was that the Central Government held no enquiry into this

allegation and afforded him no opportunity to prove it. The legal ground put forward however was that the rules of evidence promulgated in

Schedule III of the Citizenship Act were arbitrary, and ultra vires and so void, support for this being sought in the decision of the High Court of

Andhra Pradesh in AIR 1957 Andh Pra 1047.

53. The Writ Petition came on before Balakrishna Ayyar, J. and the learned Judge following the decisions of this Court in W. P. No. 260 of 1956,

rejecting the contention regarding the invalidity of para 3 of Sch. III of the Rules, dismissed the Petition. Hence this appeal. Writ Petition No. 795

of 1958 :

54. The Petitioner Umar Khan was born in Quetta in 1920. He states he came to India in 1935 and while staying in Andhra State applied for and

obtained from the High Commissioner for Pakistan at New Delhi a passport on 28-4-1954. Thereafter he went over to Pakistan on 21-4-1955 on

an exit endorsement granted by the Government: of Andhra. Reaching Karachi and after obtaining a visa on 6-4-55 from the Indian Visa Officer at

that place on 27-4-1955 he re-entered India on 4-5-1955. He proceeded to Tanjore in this State, and applied for extension of the visa and this

was granted and under it he could stay in India till 4-5-1956. He did not however leave the country and on 11-6-1958 applied to the Collector of

Tanjore for Registration as an Indian citizen u/s 5(1) of the Citizenship Act, which was rejected.

The Collector issued a notice to him on 15-8-1958 u/s 3 of the Foreigners Act directing him to leave India within a month of its receipt and as this

was dated 17-9-1958, he had to obey it by 17-10-1958. Meanwhile the Petitioner moved this Court for the issue of a Writ of Prohibition

challenging the validity of Para III of Sch. III of the Citizenship Rules 1956, and obtained a rule nisi. An allegation similar to the one made by the

appellant in W. A. No. 40 of 1959 is made by the Petitioner, that the Police officials at Kurnool -- where the Petitioner was living in 1954,

compelled him to obtain a passport -- which is similarly denied by the respondent.

Writ Appeal No. 97 of 1959:

55. The last matter before us, W. A. No. 97 of 1959, is an appeal against the judgment of Ramaswami, J. in W. P. No. 627 of 1957, which the

learned Judge dismissed in admission. The appellant was like the others involved in this group born in Quetta in 1912. He states that he has been in

India since 1924, and in Madras since 1937. While so, he obtained a passport from the High Commissioner for Pakistan in India on 7-9-1953.

There is a similar allegation that the passport was obtained not with a view to deprive himself of Indian citizenship but because of the pressure of

the Police.

He obtained a visa in 1955, and made an application for registration as an Indian citizen u/s 5(1), which was rejected. An order was passed by the

Commissioner of Police. Madras, on 14-8-1957, and thereafter he filed the Writ Petition raising the same grounds as the others viz., the invalidity

of Para III of Sch. III. Ramaswami, J. dismissed the Petition on the ground that the issue of a Writ of Prohibition which was the relief sought was

not open to the Petitioner, whatever other remedies were open. It is from this judgment that this Writ appeal has been preferred.

56. Before entering on the points urged by Mr. Nambiar which as would have been seen are common to these three proceedings we desire to

state that we should not be taken to endorse the view of Ramaswami, J. (in W. P. No. 627 of 1957 against which W. A. No. 97 of 1959 has

been filed), that even if the contentions urged in the Petition regarding the invalidity of the rules were made out, the individual directed by the notice

to remove himself from India could not invoke the jurisdiction of this Court under Article 220 of the Constitution, or that in particular a Writ of

Prohibition would not be an appropriate relief.

57. Mr. Nambiar pointed out that his client had obtained the passport not while in Pakistan, but during the course of his residence in this country,

and that this ought to make a difference. In our opinion, there is no substance in this objection. In this connection it is sufficient to draw attention to

the contrast between the language employed in Section 13 of the British Nationality and Status of Aliens Act, 1914 (carrying in this respect the

provisions contained in Section 8 of the Naturalisation Act, 1870) and Section 9(1) of the Indian Citizenship Act. The former runs:

A British subject who "when in any foreign state" and not under disability, by obtaining a certificate of naturalisation.....shall thenceforth be deemed to have ceased to be a British subject".

The words we have underlined (here in " ") do not appear in the Indian enactment. In this respect, the Indian Act has been modelled on the American Statutory provision--Section 401 of the U.S.A. Nationality Act, 1940--under which the place where the naturalisation takes place is tendered immaterial.

58. Considerable stress was laid by learned counsel on the fact that his client had not any education and that when he was informed by the Police that if he desired to continue his stay in India, it would be necessary for him to obtain a passport, he proceeded to Delhi and obtained such a document, and that in these circumstances he was entitled to plead in the alternative (a) that his naturalisation was not "voluntary" within Section 9(1) or (b) that not having the intention to renounce his Indian citizenship he could claim to be a citizen of India, and that in any event the order treating him as a foreigner and directing him to leave India without giving him an opportunity to prove these facts vitiated it. We need hardly mention that if this argument were sound it would equally apply to the persons involved in the other two proceedings.

59. We shall premise the discussion by stating that the allegations regarding the conduct of the Police have been denied, but we shall proceed on the footing that they have been made out. We have already had occasion to point out that the expression "voluntary" in Section 9(1) has been listed as contradistinguished from a foreign nationality resulting from the operation of the compulsive laws of the foreign State, and not dependent on the explicit consent of the individual concerned and termed in Public International law "compulsory", "involuntary" or "collective" naturalisation. That apart an inference drawn that an individual has acquired the nationality of a foreign State when he has by a solemn declaration asserted and affirmed that he is a national of that foreign State which under the law is undoubtedly a matter entirely within his volition and that declaration has been accepted, and acted upon by the accredited authorities of that State, cannot be said to transgress the rule requiring expatriation to be "voluntary". It is in this connection that it is necessary to stress the fact that the

appellant (and the others) were born in Pakistan, and he would be a citizen of Pakistan if his residence in India since 14-8-1947 was not intended by him to be permanent. For Section 3(a) of the Pakistan Citizenship

Act 1951 enacts:

Section 3:-- At the commencement of this Act (viz. 13-4-1951) every person shall be deemed to be a citizen of Pakistan-

(a) who or any of whose parents was born in the territory now included in Pakistan, and who after the fourteenth day of August, 1947 has not

been permanently resident in any country outside Pakistan; or

Looked at from the point of view of India, the position would be the same. He would be a citizen of India under Article 5(c) of the Constitution,

only if he had "his domicile" in the territory of India at the commencement of the Constitution and domicile would be a matter involving inter alia the

intention of the party to reside permanently in this country.

60. The fact that the appellant made the declaration on the basis of which the passport was obtained is not in dispute, and the allegations made by

him do not extend to saying that he was forced to make any false declaration. The only material factor which emerges from the allegations made is

that the appellant not being educated, did not realise that by declaring his allegiance to Pakistan, and claiming Pakistan Citizenship, he would be re-

notifying or rather denying his Indian Citizenship and was liable to be treated as a foreigner. As already pointed out, Section 9 lays down an

objective test and when the individual has brought himself within it, the law determines the legal consequences of the situation, independently of his

intent or understanding. There was, therefore, nothing to enquire into and the failure to afford the appellant the opportunity that he desired, does

not vitiate the order to remove himself from the country.

61. The result is that the two writ petitions fail and are dismissed and the rules nisi discharged. The two writ appeals also fail and are dismissed.

There will be no order as to costs in any of these.